

KIYOSHI MATSUNO

IBLA 87-169

Decided February 22, 1989

Appeal from a decision by the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C-43168.

Affirmed.

1. Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

It is the responsibility of a lessee to see that any payment tendered for annual rental on an oil and gas lease is so identified that the appropriate State Office can credit that payment to the proper lease account. When both the official assignment creating the lease and the notice informing the assignee that the assignment has been approved contains the correct serial number, but the lessee includes an incorrect serial number on his payment check, he has not adequately identified his payment, and the lease terminates by operation of law for failure to pay rental on or before the anniversary date of the lease.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Under 30 U.S.C. | 188(c) (1982), BLM has no authority to reinstate a noncompetitive oil and gas lease terminated by operation of law for failure to pay annual rental timely unless the full amount of the rental due is submitted within 20 days after the anniversary date and other requirements are met.

APPEARANCES: Kiyoshi Matsuno, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Kiyoshi Matsuno has appealed from the November 3, 1986, decision of the Colorado State Office, Bureau of Land Management (BLM), denying his petition for class I reinstatement of oil and gas lease C-43168.

Effective July 1, 1983, BLM issued noncompetitive oil and gas lease C-36575 to Charles Edward Strange, Jr., for 1,480 acres of land situated in Rio Blanco County, Colorado, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. | 226 (1982). Effective April 1, 1985, BLM approved an assignment of 100-percent record title interest in the 1,480 acres of land in lease C-36575 from Strange to Mountain Empire Energy Group, Inc. Subsequently, on May 1, 1985, BLM approved a further assignment of 100 percent of record title of all of C-36575 from Mountain Empire to Petroleum Research Corporation (Petroleum).

By notice dated March 25, 1986, BLM formally approved a partial assignment of 40 acres from Petroleum to Matsuno, effective February 1, 1986. In this notice, BLM explained:

[T]his assignment, as approved, has the effect of segregating the assigned lands into a new lease with the serial number indicated above after Partial Assignment. All future contact with this office concerning the lands in the partial assignment should refer to this new serial number as the lands will be so identified on our records.

In addition, BLM informed appellant that the serial number for the new lease was C-43168.

The anniversary date of both the base lease and appellant's new lease was July 1, 1986, and the annual rental on both leases was due on or before that date. On June 23, 1986, BLM received a check from Matsuno, dated June 19, 1986, in the amount of \$80 bearing lease serial numbers C-36575 and C-42080, but not C-43168. On August 7, 1986, BLM issued its notice informing Matsuno that his oil and gas lease C-43168 terminated on July 1, 1986, for failure to pay rental in a timely manner, and informing him of his right to petition for reinstatement of the lease pursuant to 30 U.S.C. | 188(c) (class I reinstatement) or 30 U.S.C. | 188(d) (class II reinstatement).

By letter dated August 25, 1986, Matsuno explained to BLM that the June 19, 1986, check was in payment for his two partial assignments: base lease C-36575 and assigned lease C-43168. He requested that someone check his payment. In addition, by letter dated October 10, 1986, Matsuno requested a class I reinstatement of lease C-43168, stating that his June 19, 1986, check was mailed prior to the July 1, 1986, anniversary date of the lease, and that it could be that he made a mistake on the assigned lease serial number.

By decision dated November 3, 1986, BLM denied Matsuno's petition for class I reinstatement, reasoning as follows:

Rental was received by the Minerals Management Service (MMS) on June 23, 1986, for C-42080 and C-36575 but not for C-43168. In

order to have qualified for a Class I reinstatement, you would have had to pay the July 1, 1986, rental to C-43168 within 20 days of the anniversary date. You paid the rental for C-43168 to the Bureau of Land Management on October 16, 1986, 108 days late. Your petition for reinstatement of C-43168 under P.L. 91-145, a Class I reinstatement, is hereby denied.

In accordance with the regulations at 43 CFR 3108.2-2(a)(3), you were allowed 60 days from the receipt of the Notice of Termination to reinstate the lease under either the Class I or Class II reinstatement procedures as outlined in the notice. The certified card shows the Notice of Termination was received by you on August 14, 1986; therefore, you had until October 14, 1986, in which to petition for reinstatement. Petition for reinstatement was filed in this office October 16, 1986. Therefore, this office is without authority to consider reinstatement of the lease under either P.L. 91-245 or P.L. 97-451.

On November 28, 1986, Matsuno filed an appeal which questions both BLM's notice declaring lease C-43168 terminated by operation of law and BLM's decision denying his petition for class I reinstatement. He reas-serts that his check was mailed before July 1, 1986--the anniversary date of the lease.

[1] In Pyro Energy Corp., 69 IBLA 327 (1982), BLM approved, effective July 1, 1976, the assignment of 80 acres out of base lease NM 20394 to Pyro, indicating on the approved assignment form that the new serial number for the assigned lease was NM 20394-A. The annual rental for the leases was due on April 1, their anniversary date. Pyro identified its lease as "NM 20394" on the rental payment for 1976, which was prior to approval of the lease assignment. In 1977, after formal approval of the lease assignment, Pyro submitted a check for annual rental which bore the incorrect identification number "NM 20394," but because Pyro returned the courtesy notice of payment due along with the check, proper credit was given to the account for lease NM 20394-A. In 1978, Pyro did not send in the courtesy notice, but BLM was nevertheless able to credit the account for NM 20394-A because the assignor's rental payment for NM 20394 arrived on the same date as Pyro's rental payment for 20394-A. However, in 1979, Pyro did not return the courtesy notice, so that its payment was credited to the account of lease NM 20394 since the payment check bore this number. Upon receiving payment for NM 20394 from the assignor, BLM returned it. Upon learning that BLM considered lease NM 20394-A terminated by operation of law April 1, 1979, Pyro protested, and when BLM denied its protest, Pyro appealed to the Board.

The Board's reasons for affirming BLM's decision in Pyro Energy Corp. apply with equal force in the instant case. The Board observed:

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit the payment to the proper lease account. Howard Arndt, A-27895 (Apr. 20, 1985); cf. Pacific Transmission Supply

Co., 35 IBLA 297, 299 (1978) (holding that lessee met this responsibility by timely filing a letter specifying the lease account to which payment should be applied, thus overcoming its failure to include an identification number on the payment check). Where the payment is not so identified, and, as a result, the payment is not properly credited on or before the anniversary date of the lease, it terminates by operation of law for failure to pay the rental. Howard Arndt, *supra*.

69 IBLA at 330.

Matsuno admits that he failed to identify his new lease by its correct serial number. As the Board stated in Pyro Energy Corp., "[i]n view of the large volume of accounting material which [BLM] must handle each day, it is not unreasonable to require a lessee to bear the responsibility for an error resulting in miscrediting of its annual rental payment." 69 IBLA at 331. BLM properly declared lease C-43168 terminated by operation of law on July 1, 1986.

[2] Under 30 U.S.C. | 188(c) (1982), the statutory provision authorizing class 1 reinstatement, BLM has no authority to reinstate a noncompetitive oil and gas lease terminated by operation of law for failure to pay annual rental timely unless the full amount of the rental due is submitted within 20 days after the anniversary date of the lease and other requirements are met. Thus, unless the required payment was tendered in this case on or before July 20, 1986, a class I reinstatement could not be granted. *E.g.*, Herbert J. Stinnett, 91 IBLA 239 (1987); J. Edward Hollington, 86 IBLA 345 (1985).

As noted above, while Matsuno submitted a check for \$80 to BLM on June 23, 1986, he failed to identify assigned lease C-43168 by its correct serial number, and BLM properly declared it terminated by operation of law for failure to make timely rental payment. In his October 10, 1986, letter to BLM, Matsuno assumes that by correctly identifying the assigned lease in another letter to BLM dated August 25, 1986, he meets the requirements for a class I reinstatement of the lease. He does not assert that he correctly identified the assigned lease within 20 days after its anniversary date. Under these circumstances, we must affirm BLM's denial of Matsuno's petition for class I reinstatement of C-43168. ^{1/}

^{1/} Matsuno petitioned BLM for reinstatement of lease C-41368 only under class I procedures. In its Aug. 7, 1986, decision, BLM stated that while he was allowed 60 days from notice of termination to petition for reinstatement of the lease under either class I or class II procedures, he had not filed his petition for reinstatement within the 60-day period, and accordingly that BLM was "without authority to consider reinstatement of the lease under either P.L. 91-245 [class I] or P.L. 97-451 [class II]." We affirm BLM's conclusion that Matsuno fails to meet the requirements under class II, even if he had requested such reinstatement, since, as BLM notes, his petition for reinstatement was filed on October 16, 1986, more than 60 days after BLM's notice of termination. *See, e.g.*, John F. Clifton, 82 IBLA 126 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member